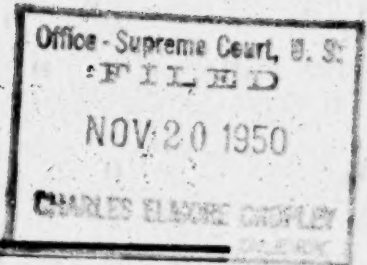


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IN THE
Supreme Court of the United States

OCTOBER TERM, 1950.

No. 348

ANDREW JORDAN, DISTRICT DIRECTOR OF IMMIGRATION
AND NATURALIZATION,
Petitioner,

vs.

SAM DE GEORGE,
Respondent.

**BRIEF FOR RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI.**

THOMAS F. DOLAN,
Attorney for Respondent.

SHERLOCK J. HARTNETT,
Of Counsel.

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**BRIEF FOR RESPONDENT IN OPPOSITION TO
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PETITIONER'S STATEMENT OF FACTS ARE FRAGMENTARY.

In the year 1921, when seventeen years of age, the Respondent, Sam De George, legally entered this country (R. 3, 4). He subsequently married an American citizen and reared a family while residing in Harvey, Illinois (R. 20, 21). He presently has a son attending an American university (R. 48). Proceedings for his deportation were commenced on the 10th day of October, 1941 (R. 10, 11), by reason of the fact that he had been twice convicted of violating S 3321 of Title 26, U. S. C., 26 U. S. C. A., S. 3321. Although the original warrant for his deportation was issued on October 10, 1941, and not on January 11, 1946, as stated by Petitioner, he was not seized for deportation by the Immigration Authorities until March, 1949, at which time a petition for writ of habeas corpus was filed in the

District Court of the Northern District of Illinois. The petition was dismissed and the prisoner remanded to the custody of the Immigration Authorities, which dismissal by the District Court was reversed by the Court of Appeals for the Seventh Circuit (R. 48-55).

PETITIONER DOES NOT SET FORTH ADEQUATE REASONS FOR GRANTING THE WRIT OF CERTIORARI.

1. The Decision of the Court Below is Not Erroneous.

The Court of Appeals of the Seventh Circuit had before it but one question which was: Is the statutory offense of conspiring to avoid the payment of excise tax on the manufacture and sale of alcoholic liquors, a crime involving moral turpitude as required under Section 19 (a) of the Immigration Act of February 5, 1917, 39 Stat. 889, as amended, 8 U. S. C. 155 (a).

In determining that question, the Court sought a definition as to what Congress intended by crimes "involving moral turpitude." The Court reviewed the hearings of the Committee of Immigration and Naturalization and reviewed the testimony given before the Committee (R. 49, 50). In the case of *Fong Haw Tan v. Phelan*, 333 U. S. 6, in determining the meaning of the statutory words "sentenced more than once", this Court reviewed the legislative history of the Act concerned and quoted at length statements made by Congressman Sabath and Congressman Burnett.

The Court below, in attempting to determine the meaning of the words "involving moral turpitude," quoted Congressman Sabath in saying that he believed "in giving a man a chance who, due to conditions, commits some offense which really was not the crime of a hardened criminal" (R. 50). The Court further quoted Police Commissioner

Woods of New York City, indicated that he intended the Act to be aimed at those aliens who commit crimes of violence. The Court concluded that Congress intended such crimes to be those that would grievously offend the moral code of mankind, even in the absence of a prohibitive statute.

The Petitioner relies upon a Fifth Circuit holding in *Guarneri v. Kessler*, 98 F. (2d) 580, certiorari denied, 305 U. S. 648, which was a case involving smuggling as a crime under the Immigration Act. It was there pointed out that smuggling was a crime at common law. In the *Guarneri* case, moral turpitude was defined as being "anything contrary to justice, honesty, principle or good morals" (98 F. 2d at 581), which definition would embrace every violation of the criminal statute and encompass offenses certainly not intended by the lawmakers.

The Petitioner relies upon *Berlandi v. Reimer*, 133 F. 2d 429, wherein it was decided that the evasion of taxes due the United States Government on alcoholic beverages, was a crime involving moral turpitude. The Court below considered the *Berlandi* case in its entirety and rejected the reasoning contained therein. In the *Berlandi* case, the Court decided that prior to the repeal of the prohibition laws, the violation of the Volstead Act would not be a crime involving moral turpitude. A distributor of alcoholic beverages prior to repeal could have been prosecuted under either the Volstead Act or under the Internal Revenue Laws. A violation of either would not at that time, have been a crime involving moral turpitude, but since the repeal of the 18th Amendment, the violator could be prosecuted only for violation of the Internal Revenue Act and the Court reasons that the crime now does involve moral turpitude. As the Court in the instant case has pointed out, the moral turpitude element of the crime would depend upon the purpose which the perpetrator had in mind at

the time the crime was committed and that such position is untenable in deportation proceeding as is involved here.

In the *Berlandi* case, the Court at the outset seemed determined to deport the alien, saying "The alien . . . was thereafter married in Pennsylvania to a native born citizen of the United States and has no children. His parents, brothers and sisters live in Italy and his wife contemplates a divorce." 133 F. 2d at 430.

2. The Decision Below Presents No Real or Embarrassing Conflict.

In *Layne and Bowler Corporation v. Western Well Works, Inc., et al.*, 261 U. S. 387, this Court said:

" . . . it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." At Page 393.

It is submitted that the analysis and reasoning applied to the case involved by the lower court in the instant case disposes of the question and presents no problem for this court to review. The opinion of the Court below analyzes the conflicting opinion of *U. S. ex rel Berlandi v. Reimer, supra*, and properly refuses to follow that decision. The case of *Maita v. Haff*, 116 F. 2d, 337, is not in conflict with the decision below; a reading of that case reveals that it was admitted by the Appellant that the crime of evading the tax on liquor involved moral turpitude and there was no discussion of that point in the opinion. The problem presented to the Court in the *Maita* case was stated as follows:

"Appellant contends that the Court erred in denying the application on the ground that a fair hearing was

not afforded him and that the evidence does not support the order of deportation." At page 337.

This Court can affirm the decision of the Seventh Circuit by dismissing the petition for the writ of certiorari.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the petition for writ of certiorari should be denied.

THOMAS F. DOLAN,
Attorney for Respondent.

SHERLOCK J. HARTNETT,
Of Counsel.